

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

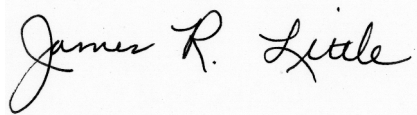
Notice FLP-213

1951-C, 1955-A, 1956-B,
1962-A

For: State and County Offices

**Classifying Accounts as Currently Not Collectible (CNC) and
Collecting FLP Debt Through Cross-Servicing and Administrative Offset**

Approved by: Acting Administrator



1 Overview

A

Background

The Debt Collection Improvement Act of 1996 (DCIA) requires Federal agencies to transfer delinquent nontax debt to the U.S. Department of the Treasury (Treasury) for debt collection action, known as cross-servicing and administrative offset. Treasury's regulations implementing cross-servicing are found at 31 CFR 285.12. The administrative offset provisions are contained within the Federal Claims Collection Standards at 31 CFR 901.3.

Pursuant to OMB Circular A-129, debt should be classified "currently not collectible" (CNC) before referring the debt to Treasury for collection.

The General Accounting Office routinely monitors FSA compliance with DCIA requirements. FSA must, therefore, refer all eligible CNC accounts to Treasury as soon as possible.

Continued on the next page

Disposal Date

October 1, 2001

Distribution

State Offices; State Offices relay to County Offices

Notice FLP-213

1 Overview (Continued)

B

Purpose

This notice:

- obsoletes Notice FLP-158
- informs State and County Offices of actions to be taken for CNC accounts

Note: Since the borrower remains personally liable for the debt, CNC does not result in a loss to the Government. Therefore classifying an account CNC does not result in debt forgiveness. Concurrence from the U.S. Department of Justice (DOJ) **is not required** to classify a non-monetary judgment account CNC. However, DOJ concurrence is required to settle borrower debt with a release of personal liability, following cross-servicing, when the borrower has received previous debt forgiveness, such as writedown, buyout, cancellation, or a compromise or adjustment offer.

- provides guidance for servicing CNC accounts.
-

C

Contact

If there are any questions about this notice, contact 1 of the following according to this table.

IF there are questions about...	THEN...
FLP procedures	<ul style="list-style-type: none">• County Offices shall contact the State Office• State Office shall contact David Spillman, Chief, Direct Loan Servicing Branch at 202-720-0900.
cross-servicing or TOP processes	State Offices shall contact KCFO, Loan Operations Division (LOD), Program Reporting Branch (PRB) at 314-539-2494.

2 Debts CNC - Transaction Code 3K (Chargeoffs)

A

New CNC's

RD Instruction 1955-A, section 1955.18(f) states that borrowers will be sent a letter similar to RD Instruction 1955-A, Exhibit F, if an unsatisfied account balance remains following liquidation. If the account has not been accelerated, before sending Exhibit F, consult Office of General Counsel (OGC) to specify the beginning date for the statute of limitations and the basis for the determination. Exhibit F must be sent within 60 calendar days after all liquidation action has been completed. Borrowers who do not respond to Exhibit F must be converted to CNC within 180 calendar days after all liquidation action has been completed.

Exhibit F will not be sent:

- when a deficiency judgment will be obtained according to RD Instruction 1955-A, section 1955.18(g)
- if all parties originally liable for the debt are defunct or deceased
- if all parties originally liable for the debt have filed a bankruptcy petition and the case is pending in the bankruptcy court (unless Regional OGC advises otherwise), all parties have been discharged through bankruptcy, or otherwise released from liability for the debt
- if OGC advises that the 10-year statute of limitations has expired, that the debt is legally without merit, or that Exhibit F should otherwise not be sent.

Continued on the next page

Notice FLP-213

2 Debts CNC - Transaction Code 3K (Chargeoffs) (Continued)

A

New CNC (Continued)

Before being converted to CNC, accounts must meet the requirements in FSA-1956-20.

Once converted to CNC, complete FSA-1956-21 (Exhibit 1) and submit to LOD, PRB by FAX at 314-539-6266, by the 15th of each month. LOD, PRB will:

- refer all eligible CNC accounts listed on FSA-1956-21 to Treasury for cross-servicing
- provide State Offices a report of all loans submitted with each referral.

FSA-1956-20 is available from the FSA Forms On-line Website at <http://intranet.fsa.usda.gov>. Click on the link to the FFAS Employee Forms Site.

Charge off will no longer be used by FLP for accounts being classified CNC. CNC will be entered as type of settlement on FmHA 1956-1.

B

Maintaining Case Files

The provisions of 25-AS, subparagraphs 86 E through H, and paragraphs 88 through 90, do **not** apply to CNC accounts. Promissory notes must be retained on all CNC accounts. **The folders of CNC accounts shall be labeled “CNC.”** **Maintain CNC borrower case folders separate from active and closed borrower case folders.**

State Offices will maintain the original or copy of the case folder. The State Office case folder shall include the following:

- copies of the original promissory note
 - FmHA-1956-1 used to convert the account to CNC
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Notice FLP-213

2 Debts CNC - Transaction Code 3K (Chargeoffs) (Continued)

B

Maintaining Case Files (Continued)

- FSA-1956-20 (or FSA-1956-10 if prepared before September 11, 2000)
 - the delinquency loan servicing history, including the date of acceleration and any OGC opinion regarding the statute of limitations beginning and ending dates for the 6- and 10-year statutes
 - for nonjudgment cases (includes both situations where a deficiency judgment was not sought and cases where no deficiency was obtained), a copy of the asset investigation and credit report obtained before converting the account to CNC
 - for monetary judgment accounts, a copy of the deficiency judgment
 - a copy of the most recent financial statement submitted by the borrower
 - copies of:
 - FSA-1956-21 (Exhibit 1)
 - FSA-1956-22 (Exhibit 2)
 - all bankruptcy court documents
 - all correspondence about the account once classified as CNC
 - FmHA 1951-9
 - a record of any reported changes in the borrower's financial condition.
-

3 Referral for Cross-Servicing and TOP

A

CNC Debts Eligible for Cross-Servicing and TOP

Debt will **not** be canceled if collection is possible through TOP or cross-servicing. With the exception of debt pending action by bankruptcy courts or debt discharged in bankruptcy, debt must be referred for TOP and cross-servicing unless the statute of limitations has run or OGC issues a legal opinion stating that the debt cannot be collected.

Existing CNC debts may or may not currently be referred to Treasury for cross-servicing. More information is needed than is currently available in the Program Loan Accounting System before the debt can be referred for cross-servicing. FSA-1956-21 has been developed to provide the information necessary to determine and monitor eligibility for cross-servicing.

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Notice FLP-213

3 Referral for Cross-Servicing and TOP (Continued)

A

CNC Debts Eligible for Cross-Servicing and TOP (Continued)

State Offices shall take the following action on existing CNC accounts.

Step	Action
1	If the account has not been accelerated, consult OGC to determine the beginning date of the statute of limitations and the basis for that determination, if it was not provided before.
2	Complete FSA-1956-21 (Exhibit 1).
3	FAX completed FSA-1956-21 to LOD, PRB at 314-539-6266.

Based on the information received, LOD, PRB will recall ineligible debt from cross-servicing and TOP, and refer eligible debt to Treasury.

Changes to data previously reported on FSA-1956-21 must be FAXed to LOD, PRB at 314-539-6266 using FSA-1956-22 (Exhibit 2).

Note: Accounts that are past the 10-year statute of limitations must be canceled.

B

Statute of Limitations and Accounts That Are “Legally Without Merit”

Treasury has informed FSA that accounts on which the 6-year statute of limitations has expired **should not** be referred for cross-servicing. For accounts that have been accelerated, the statute of limitations normally expires **6** years from the date of acceleration. For accounts that have not been accelerated, or on installments due before acceleration, the statute of limitations runs for a 6-year period from the date the installment became delinquent.

In cases where the **6**-year statute of limitations has expired, State Offices must also determine whether the **10-year** statute of limitations on referrals to TOP has expired. Except for those cases flagged according to FmHA Instruction 1951-S, Exhibit O, TOP referral from KCFO is automatic once an account becomes 90 calendar days delinquent, State Offices must submit FSA-1956-22 to LOD, PRB to recall an account from cross-servicing or delete it from TOP. See subparagraph A.

If it has been 10 years since the date of acceleration or OGC determines that the 10-year statute of limitations has expired, SED's should cancel debt of less than \$1 million, without DAFLP concurrence. See Notice FLP-169, subparagraph 2 B.

Continued on the next page

3 Referral for Cross-Servicing and TOP (Continued)

C

Discrimination Lawsuits

Accounts involved in an administrative discrimination complaint are eligible for TOP referral, but not for cross-servicing. Notify LOD, PRB immediately using FSA-1956-22, if a borrower becomes involved in an administrative discrimination complaint. Accounts involved in discrimination litigation should only be referred for cross-servicing after discussion with OGC. See subparagraph A.

4 Treasury Collection Activities

A

Cross-Servicing

LOD, PRB will refer eligible FLP debt identified as “currently not collectible” (CNC) to Treasury for TOP and cross-servicing. However, CNC accounts where the 6-year statute of limitations has expired will only be referred for collection through TOP. See subparagraph 3 A for information about TOP.

Referral for cross-servicing gives Treasury and its designated private collection agencies (PCA’s) the authority to settle the debt through a repayment agreement or compromise offer on FSA’s behalf. Treasury will also return debt as uncollectible. LOD, PRB will then ask for a decision from SED regarding debt cancellation. Chief, KCFO, LOD is authorized to process settlements approved by State Offices.

Once referred, Treasury will send a demand letter to the borrower. Treasury will service the debt for 30 calendar days. If the debt is not settled within 30 calendar days, Treasury will refer the debt to 1 of 12 PCA’s to service the debt. Borrowers with multiple loans may be sent to multiple PCA’s for collection, since each loan may be sent to a different PCA.

If the **first** PCA is unsuccessful after 6 months, Treasury will forward the loan to a second PCA for debt collection. If the **second** PCA is unsuccessful after 6 months, Treasury will refer the loan to FSA with a recommendation for writeoff or to DOJ for further action.

Under cross-servicing, the debt may also be collected by Treasury through administrative wage garnishment, up to 15 percent of current net disposable pay, up to a maximum of 25 percent for multiple agencies.

Continued on the next page

4 Treasury Collection Activities (Continued)

B

TOP

TOP is the offset of Federal government payments to delinquent borrowers, including the following:

- income tax refunds, up to 100 percent
- Federal salary pay, including military pay according to RD Instruction 1951-C, up to 15 percent of the current net disposable pay
- Federal retirement, including military retirement pay according to the administrative offset provisions of RD Instruction 1951-C and 7 CFR 3.32

Note: However, if payment is being made in installments, the Office of Personnel Management will usually not deduct more than 50 percent of the net annuity. See 5 CFR 831.1807.

- contract or vendor payments, up to 100 percent
- certain benefit payments, such as the following:
 - Social Security (other than Supplemental Security Income)
 - Railroad Retirement, other than tier 2
 - Black Lung (Part B).

Note: According to Treasury regulations at 31 CFR 285.4 the offset is the lesser of the following:

- the amount of the debt, including any interest, penalties, and administrative costs
 - 15 percent of the monthly covered payment
 - the amount by which the monthly covered payment exceeds \$750.
-

5 Servicing CNC Accounts

A Collection Activity

Treasury regulations require that FSA stop all collection activity, with the exception of referral for TOP and internal administrative offset, on debts transferred for cross-servicing.

In the event a CNC borrower takes or mails a payment to the local servicing office, call the State Office to verify if the account is at Treasury for cross-servicing. The State Office shall call KCFO, LOD, PRB for cross-servicing verification. If the account has been referred, write the borrower's name, case number, and loan number, if specified by the borrower on the check. Address the payment to Treasury as follows:

US DEPARTMENT OF THE TREASURY
FMS DEBT MANAGEMENT SERVICE
PO BOX 105576
ATLANTA GA 30348.

The check can be processed at Treasury even though the check is made payable to the Agency.

Borrowers referred for cross-servicing will continue to have FmHA 1951-9 and, if applicable, IRS Form 1098 generated at calendar yearend if the account had activity. Local servicing offices shall forward the annual statement to the borrower and a copy to the State Office.

B Removing Borrowers From Cross-Servicing

Treasury requirements mandate that a borrower can only be removed from cross-servicing for a valid reason, such as death, bankruptcy, or the expiration of the 6-year statute of limitations. The delete process must be initiated by LOD, PRB after notification by the State Office. State Offices shall FAX FSA-1956-22 to LOD, PRB at 314-539-6266. See subparagraph 3 A.

C Removing Borrowers From TOP

Although CNC accounts must not be deleted on the TOP offset screens for any reason, the process for TOP can be initiated by LOD, PRB upon notification by the State Office. See subparagraph 3 A for information to FAX and LOD, PRB FAX number. For TOP, the statute of limitations generally expires 10 years after the right to collect the debt first accrued or the last voluntary payment was made.

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5 Servicing CNC Accounts (Continued)

D

Bankruptcy

Immediately notify LOD, PRB by FAX at 314-539-6266 when a borrower, whose account has been converted to CNC, has filed bankruptcy. Mail and FAX a copy of the bankruptcy filing to LOD, PRB. If the account has been referred for cross-servicing or TOP, LOD, PRB shall notify Treasury to stop collection activities and initiate debt recall procedures. The account will be serviced by the State Office and FLM according to RD Instruction 1962-A, section 1962.47.

E

Borrowers' Inquiries

CNC debt may be settled by FSA upon application by the borrower, only if the debt has not yet been referred to Treasury for cross-servicing. If a borrower submits or inquires about a debt settlement application, the State Office shall contact LOD, PRB to determine whether the account has been referred for cross-servicing. If the account has been referred for cross-servicing, notify borrowers that the debt is now at Treasury, and that negotiations need to be with Treasury. Borrowers will not be provided appeal rights for settlements rejected by Treasury and returned to FSA.

Borrowers may contact Treasury at 1-888-826-3127.

F

Treasury Inquiries

Documentation about borrowers submitted to Treasury for cross-servicing may be requested by Treasury or PCA's on the Debt Management Services (DMS) Action Form. If requested, LOD, PRB shall provide the information it has available. Requests for more detailed information shall be FAXed to the State Offices. Treasury has mandated a 15-calendar-day response time on the DMS Action Form from the date forwarded by Treasury. Multiple requests for the same borrower may be received since multiple loans may be sent to different PCA's and a borrower may dispute the debt more than once. Retain a copy of the information forwarded to Treasury in the State Office case operational file.

Continued on the next page

Notice FLP-213

5 Servicing CNC Accounts (Continued)

G

Account Resolution

Treasury has authority to negotiate repayment agreements and compromises, and to designate debts as uncollectible. When necessary, Treasury or FSA will obtain DOJ's authorization on settlement of deficiency judgments and accounts that received previous debt forgiveness.

Note: Treasury authorizes repayment agreements, compromises, and debt settlements on a loan-by-loan basis, not by account. FSA will be processing settlements returned by Treasury on the same basis.

Offices shall take action according to the following table.

Office	Action
	Repayment Agreements
KCFO, LOD, PRB	Receive DMS Action Form recommending a repayment plan.
	FAX the action form to the State Office for approval.
	Sign the action form once the approval letter is received from the State Office.
	FAX signed action form to Treasury.
State Office	Based upon information in the State Office file, by FAX, provide LOD, PRB with a recommendation about the repayment agreement. The State Office recommendation must be signed by SED or designee. Treasury has mandated a 15-calendar-day response time on the DMS Action Form from the date forwarded by Treasury.

Continued on the next page

5 Servicing CNC Accounts (Continued)

G
Account
Resolution
(Continued)

Office	Action
	Compromise Offers
KCFO, LOD, PRB	Receive DMS Action Form recommending a compromise offer.
	FAX the action form to the State Office for approval or to determine whether a deficiency judgment or previous debt forgiveness was obtained.
	Sign the action form once approval letter is received from the State Office.
	FAX signed action form to Treasury. If the borrower received previous debt forgiveness or the account is in excess of \$100,000, Treasury will contact DOJ for approval.
	Monitor the payments received. Once the full amount of the compromise is applied, minus Treasury and PCA fees (currently up to 28 percent), provide a memo signed by Chief, LOD to LOD loan servicing branches for cancellation of the remaining debt.
	FAX memo about write-off and supporting documentation to State Offices.
State Offices	Based upon information in the State Office file, by FAX, provide LOD, PRB with a recommendation about the compromise offer. The State Office recommendation must be signed by SED or designee. The memo must note if the borrower received previous debt forgiveness. If the State Office does not concur, documentation supporting a greater collection must be provided. Treasury has mandated a 15-calendar-day response time on the DMS Action Form from the date forwarded by Treasury.
	Attach the LOD memo of debt cancellation and supporting documentation to the State Office copy of FmHA 1956-1 that was used to approve the CNC debt.
	Forward a copy of the LOD memo of debt cancellation and supporting documentation to Farm Loan Manager (FLM).

Continued on the next page

Notice FLP-213

5 Servicing CNC Accounts (Continued)

G Account Resolution (Continued)

Office	Action
	Compromise Offers
FLM	Attach the LOD memo of debt cancellation and supporting documentation on top of the County Office copy of FmHA 1956-1 that was used to approve the CNC debt.
	Comply with 25-AS, subparagraphs 86 E through H, and paragraphs 88 through 90. When a compromise has been paid in full, the promissary notes should be stamped, "Satisfied by Approved Compromise", and returned to the borrower.
	Cancellation of Debt
KCFO, LOD, PRB	Receive DMS Action Form returning debt to FSA as uncollectible.
	FAX the action form to the State Office for approval or to determine whether a deficiency judgment or previous debt forgiveness was obtained.
	Provide supporting documentation and a memo signed by the Chief, LOD to LOD loan servicing branches to process all settlements approved by SED. See note following this table for exceptions.
	FAX memo about cancellation of debt to State Offices.
State Offices	Based upon information in the State file, by FAX, provide LOD, PRB with recommendation about the cancellation. If deficiency judgment or previous debt forgiveness was obtained, the debt cannot be canceled without DOJ's consent. The State Office recommendation must be signed by SED or designee. If the State Office does not concur, the State Office must provide documentation supporting a deficiency judgment or other valid reason for not canceling the debt. The State Office recommendation must be provided within 15 calendar days from date the DMS Action Form was forwarded by Treasury.
	Attach the LOD memo of debt cancellation on top of the State Office copy of FmHA 1956-1 that was used to approve the CNC debt. See note following this table.
	Forward a copy of the LOD memo of debt cancellation to FLM.

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5 Servicing CNC Accounts (Continued)

G
Account
Resolution
(Continued)

Office	Action
FLM	Attach the LOD memo of debt cancellation on top of the County Office copy of FmHA 1956-1 that was used to approve the CNC debt.
	Comply with 25-AS, subparagraphs 86 E through H, and paragraphs 88 through 90. When a cancellation is processed, the promissory notes should be stamped, "Satisfied by Approved Cancellation", and returned to the borrower.

Notes: If the U.S. Attorney's Office will not authorize the cancellation of CNC deficiency judgments, the files will be marked "CNC-Deficiency Judgment". CNC-Deficiency Judgment files will be maintained at the County Office until the deficiency judgment expires or DOJ authorizes cancellation of the debt. If the deficiency judgment expires, the debt may be canceled under RD Instruction 1956-B, section 1956.70(c) upon the written recommendation of the OGC Regional Attorney.

If a cancellation is not approved for reasons other than a deficiency judgment, the file will be marked, "CNC Followup", and be monitored on a continual basis until the cancellation is approved.

Accounts that received previous debt forgiveness must be settled according to RD Instruction 1956-B, Exhibit B. SED is responsible for obtaining DOJ consent to cancel debts with principal balances of \$100,000 or more.

FSA-1956-21, List of Currently Not Collectible (CNC) Debts Eligible To Be Referred to Treasury for Cross-Servicing

REPRODUCE LOCALLY. Include form number and date on all reproductions.

FSA-1956-21
(07-16-01)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

LIST OF CURRENTLY NOT COLLECTIBLE (CNC)
DEBTS ELIGIBLE TO BE REFERRED TO TREASURY
FOR CROSS-SERVICING

1. State

2A. Contact Name and Address

2B. Telephone No. ()

Refer all eligible CNC accounts listed on this form to Treasury for cross-servicing. More than one primary borrower can be listed per form.

3A. Borrower Case No. or Co-Debtor TIN (xx-xxxx-xxxxxx0000) 1/	3B. Primary Borrower Name or Co-Debtor Name	3C. Co-Debtor Address (if different than Primary Borrower)	4. Fund Code and Loan No.	5. Total CNC Amount	6. Date Statute of Limitations Begins	7. Basis for SOL 2/	8. Judgment 3/	9. Prior Debt Forgiveness		10. Comments 4/
								YES	NO	

11. SED SIGNATURE

12. DATE PREPARED

13. PAGE
OF

1/ List Co-debtor name under primary borrower name.

2/ "1" = Acceleration "2" = Date of last payment "3" = Date last acknowledgment "4" = Installment due date "5" = Final year of loan

3/ "D" = Deficiency "F" = Foreclosure "NA" = Not a judgment

4/ Indicate if the borrower is a Co-debtor or any other pertinent information.

FSA-1956-22, Update to TOP and Cross-Servicing Information

REPRODUCE LOCALLY. Include form number and date on all reproductions. FSA-1956-22 U.S. DEPARTMENT OF AGRICULTURE (07-16-01) Farm Service Agency		1. State	2. Date Prepared
UPDATE TO TOP AND CROSS-SERVICING INFORMATION		3A. Contact Name and Address	
		3B. Telephone No. ()	
This form is used to change previously reported information on FSA-1956-21 or to notify KCFO of recall, delete, and/or refund requests. For each item write in the applicable data.			
3. Choose type(s) of request (<i>more than one request can be selected</i>): <input type="checkbox"/> RECALL <input type="checkbox"/> DELETE <input type="checkbox"/> REFUND			
4. Primary Borrower Name			
5. Case No.			
6. Primary Borrower Fund Codes and Loan Nos.			
7. Co-Debtors Name			
8. Co-Debtors Address (if different from primary borrower)			
9. Co-Debtors TIN			
10. Co-Debtor's Fund Codes and Loan Nos.			
11. Is Loan a CNC?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
12. Delinquency Amount		\$	
13A. Delete - Enter one of the following codes to delete: <u>1/</u>		13B. If '09' is entered, indicate statute of limitation beginning date	13C. Basis for SOL <u>2/</u>
14. Enter "RECALL" if debt is at cross-servicing and is no longer eligible for cross servicing			
15. Reason for delete, recall or refund if code not entered in Item 13A:			
16. Amount of payment to be refunded if a collection or offset occurred and should not have been processed		\$	
17A. Preparer Name		B. Telephone No. ()	
18A. Farm Loan Manager or Farm Loan Program Chief		B. Date	
1/ ENTER THE FOLLOWING CODES AS APPLICABLE: "01" - Foreclosure, not eligible under state law "02" - Bankruptcy, pending or under stay "03" - Legal action, other than bankruptcy or foreclosure, prohibits offset "08" - SAA "09" - Past 10-year statute of limitations "16" - Approved plan to eliminate delinquency "NA" - For unique circumstances list reason in Item 15		2/ BASIS FOR SOL: "1" - Acceleration "2" - Date of last payment "3" - Date of last acknowledgment "4" - Current installment due date "5" - Final year of loan	